IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9167 of 2004

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMABEN MANCHHARAM TRIVEDI

Versus

STATE OF GUJARAT & ANR.

Appearance:

1. Special Civil Application No. 9167 of 2004

MR IQBAL M MALIK for the Petitioner
MR HL JANI, AGP for Respondent No. 1
MR JAGDISH M SHAH for Respondent No. 2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 27/08/2004

ORAL JUDGEMENT

RULE returnable today.

Learned advocates Mr.Jani and Mr.Shah waive service of rule on behalf of the respective respondent.

The petitioner, a Hostel Warden, challenges the order of transfer dated 17th/18th July, 2004.

The respondent No.2 is a public charitable trust. It runs and manages hostels for backward classes in Kheda District. By order dated 3rd July, 1979 made by the respondent No.2, the petitioner was appointed to be the Hostel Warden (Gruh Mata) in the Girls' Hostel at Balasinor. By impugned order the petitioner has been transferred to Girls' Hostel at Bodal. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr.Malik has relied upon the communication dated 20th May, 1977 issued by the Deputy Director, Social Welfare Department. By the said communication the salary of the Hostel Wardens of 466 hostels for backward classes has been sanctioned for the purpose of grant-in-aid on condition that such Hostel Wardens shall not be transferred from one hostel to another without the prior permission of the Director of Social Welfare or of the District Social Welfare Officer.

Learned advocate Mr.Shah appearing for the respondent No.2 has submitted that the impugned order is not that of transfer but is of deputation for a temporary period. The existence of the aforesaid communication dated 20th May, 1977 is denied. It is stated that one Minaben Saral, Hostel Warden at Girls' Hostel, Bodal is sick. Therefore, for temporary period the petitioner has been deputed to Girls' Hostel at village Bodal.

I see no substance in the defence raised by Mr.Shah. The condition of grant specifically debars transfer of a Hostel Warden from one hostel to another without the prior permission of the concerned authority. So long as the respondent No.2 receives the Government grant the said condition is binding to the respondent No.2. The impugned order does not suggest that the transfer in question is for a temporary period. Further, learned advocate Mr.Shah has stated that the said Minaben Saral was on leave for one month. Now that the said period of one month is over the purpose of transfer shall not survive. Therefore also, the impugned order of transfer requires to be set aside.

The reliance placed on the judgment in the matter of Laxmi Narain Mehar v/s. Union of India and others [AIR 1997 SC 1347] is misconceived. The law on transfer of a Government servant cannot be applied in the present case. It is not in dispute that the respondent No.2 did not take prior approval as required.

In above view of the matter the petition is allowed. The impugned order dated 17th/18th July, 2004 (Annexure-'C' to the petition) is quashed and set aside. The petitioner shall be posted to be the Hostel Warden at the Girls' Hostel, Balasinor, forthwith. Rule is made absolute. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)
/sakkaf